

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Inquiry Concerning Deployment of)	
Advanced Telecommunications)	
Capability to All Americans in a Reasonable)	
And Timely Fashion, and Possible Steps)	CC Docket No. 98-146
To Accelerate Such Deployment Pursuant)	
To Section 706 of the Telecommunications)	
Act of 1996)	

REPLY COMMENTS OF BELL SOUTH CORPORATION

BellSouth Corporation, for itself and its wholly owned affiliated companies (collectively “BellSouth”), submits the following reply comments in response to the *Notice of Inquiry* (“*NOI*”) released in the above-captioned proceeding.¹

I. BROADBAND MARKET

The source of this proceeding is the Commission’s mandate to determine whether advanced telecommunications capability is being deployed to all Americans in a reasonable and timely fashion. If its determination is negative, the Commission shall take immediate action to accelerate deployment of such capability by removing barriers to infrastructure investment and by promoting competition in the telecommunications market. Several entities, including competitive local exchange carriers (“CLEC”), have a unique view of what actions will remove barriers to infrastructure investment and promote competition. Their idea of removing barriers to

¹ *In the Matter of Inquiry Concerning Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable And Timely Fashion, and Possible Steps To Accelerate Such Deployment Pursuant To Section 706 of the Telecommunications Act of 1996*, CC Dkt. No. 98-146, *Notice of Inquiry*, FCC 01-223 (rel. Aug. 10, 2001) (“*NOI*”).

infrastructure investment is to have the Bell Operating Companies (“BOCs”) incur all of the expense and risk of investment in facilities to provide advanced services and then deliver those facilities to any carrier that wants to purchase them at total element long run incremental costs (“TELRIC”). This action would undoubtedly further subsidize CLECs and other carriers, at the expense of BOCs, in a market where there are numerous competitors and providers other than the BOCs. In so doing, the Commission would do the very thing Congress was trying to avoid – establish a regulatory regime that discourages investment. If CLECs are allowed to use BOC capabilities at TELRIC prices that are often significantly lower than the level needed to justify investment, they will never invest in their own facilities. Moreover, if the BOCs are forced to offer unbundled advanced services capabilities at TELRIC prices while incurring all of the risk of deployment, it is clear that prudence will dictate that the BOCs limit their investment in these new technologies. Clearly, this type of regulation creates the very barriers to investment that the Commission has been ordered to remove.

Additionally, the Commission cannot limit the advanced services market to only the DSL market, as some commenters attempt to do. The advanced services market is much broader, including services provided by cable modems and wireless facilities. It would indeed be myopic in addressing the delivery of advanced services to focus only on DSL service when cable modems currently dominate the market for broadband services. Accordingly, any efforts the Commission undertakes to remove barriers to investment in infrastructure and promote competition must be viewed in light of the entire advanced services market and not be limited to the DSL market. Focusing only on one segment of the market will not foster the balanced view necessary to bring broadband services to all Americans. Indeed, instead of trying to micro-manage the DSL market, the Commission should learn from its experience with limited

regulation of the cable modem market. General forbearance by the Commission in regulating cable modem service has allowed providers of cable modem service to flourish and be the market leader in delivering advanced services.

Accordingly, the Commission should likewise limit regulation of DSL facilities with the goal of quickly establishing regulatory parity between DSL and cable modem services. As BellSouth set forth in its comments, this restraint must include not unbundling packet switching equipment, including DSLAMs and line cards used in NGDLC. The real consequence of such unbundling is the death of investment by CLECs and the disincentive to invest further by the BOCs. In the face of having to compete with a BOC who is forced to unbundle its advanced services capability and offer the capability at what is, by definition, a “below-market” price, CLECs will be unable to justify investing in their own capabilities. Likewise, economics will demand that BOCs curb investment in advanced services because they will bear the entire risk of investment and deployment and, *at best*, achieve small returns such as those afforded by TELRIC. Thus, regardless of the claims of Sprint and WorldCom, unbundling packet switching will have a chilling effect on DSL deployment.²

Sprint makes the *ipse dixit* claim that the BOCs’ argument that “opening of [packet switch] networks creates an environment in which LECs have no incentive to invest in infrastructure” is false. Sprint suggests that demand will drive deployment. Bad business plans, however, cannot be shored up by market demand. Overall losses on a product cannot be countered simply by increasing volume. If Sprint believes that demand will drive the market regardless of the return on investment, then it would be deploying packet switching, including DSLAMs, to capitalize on that demand. Instead, Sprint is savvy enough to understand that

² Sprint at 5; WorldCom at 9.

adequate return must be made off of that investment in order to justify its deployment. Sprint's lack of deployment, given increases in demand for broadband services, underscores the fact that return on investment more than demand will drive deployment. The Commission should therefore maintain its original finding in the *UNE Remand Order* and refrain from unbundling packet switching.³

Moreover, unbundling advanced services facilities will not speed the deployment of advanced services to "all Americans." If the Commission requires BOCs to unbundle their packet networks, CLECs will offer high-speed data services only to the customers where BOCs have deployed facilities to provide such services. Accordingly, unbundling advanced services facilities will not generate new advanced services users, but rather will reallocate those desiring advanced services to other providers. This does not serve to promote the stated goal of increased deployment to all Americans, but to the contrary, because of the significant disincentives it places on the BOCs, deployment will become stagnant.

The Commission's goal should be to institute regulatory policies that encourage *all carriers* to invest in facilities to provide advanced services. In the current situation, the proper regulatory policy is no new regulation. In fact, all carriers are capable of building their own networks consisting of remotely deployed data equipment. The existing copper sub-loops can continue to be used to deliver the service to end-users. If the Commission would firmly establish that existing regulation, i.e., the Commission's current unbundling requirements, combined with CLECs' investment in facilities to provide advanced services, i.e., DSLAMs and packet switching, provides CLECs adequate means to compete in the advanced services market, then all

³ *In the Matter of Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-98, *Third Report and Order and Fourth Further Notice of Proposed Rulemaking*, 15 FCC Rcd 3696, 3835-3840, ¶¶ 306-317 (1999) ("*UNE Remand Order*").

carriers would have the confidence to deploy new technology to make advanced services available to more end-users. This confidence will stimulate investment and result in more Americans having access to advanced services.

II. BROADBAND REPORTING

WorldCom proposes several new reporting requirements that it contends BOCs should have to provide to the Commission. Unsurprisingly, WorldCom limits the proposed disclosures to BOCs and does not believe CLECs or IXC, of which WorldCom is both, should be subjected to the same reporting requirements. Such limitation not only emphasizes WorldCom's disingenuousness but also would be completely useless to the Commission. Clearly, WorldCom's only reason for requesting the information is to gain competitive information about the BOCs without having to reveal the same information about itself. Moreover, as discussed throughout, the advanced services market cannot be limited to DSL; it is in fact dominated by cable modems and wireless carriers are constantly increasing their market share. Limiting the gathering of information only to include BOCs will not provide the Commission any useful information on the market as a whole. Indeed, it will skew the Commission's perception of how the market is actually performing. WorldCom fully acknowledged this point in its comments filed in the Broadband Reporting docket on March 19, 2001 when it stated:

The Commission should gather data from *all broadband service providers*, including all ILECs (without a size or number of customers exemption), CATV operators, CLECs, DLECs, MMDS and other terrestrial wireless operators, and satellite operators. However, the Commission should ensure that the burden of its broadband data request does not outweigh its usefulness in part by requesting annual, not semi-annual, reporting.⁴

⁴ WorldCom Comments, CC Docket No. 99-301, filed on March 19, 2001 (emphasis added).

The information WorldCom suggested be disclosed will provide no benefit to the Commission if limited only to the BOCs. The only way the suggested information would be of any value is if it is required to be disclosed by all broadband service providers. Even then, the Commission must balance its usefulness against the burdensomeness of disclosure.

III. CONCLUSION

While deployment of advanced services is occurring in a reasonable and timely manner, there are things the Commission can and should do to accelerate deployment. Given the emerging and dynamic nature of the advanced services market, the most important steps the Commission can take are to establish a regulatory environment that treats all providers and technologies with parity and to provide competitors with the certainty of knowing that the Commission will not change rules, after investments have been made in competitive markets, in order to advantage one group or class relative to another. A major disparity currently exists in the treatment of cable modem services and DSL services, and the Commission will accelerate broadband service deployment by resolving this gap ideally in a way that provides equal and minimal regulation for all participants.

In much the same way that certainty is of critical value to the BOCs considering investments in advanced services capabilities, it is critical to CLECs considering such investments. The business and investment plans of facilities-based CLECs and BOCs alike will be badly undermined if the Commission distorts the existing market by forcing BOCs to support non-facilities-based CLECs (and others wishing to utilize BOC advanced services capabilities at below-market prices) through unbundling or other non-market-based requirements. In the interest of providing the marketplace with regulatory certainty, the Commission can acknowledge that its current unbundling rules already provide CLECs with access to the network

elements necessary to provide advanced services in exactly the same way that BOCs do. CLECs are not impaired by having to provide their own DSLAMs and ATM switches. Unbundling these packet switching facilities will only advantage certain CLECs at the expense of the BOCs. Accordingly, the Commission should dismiss requests by certain parties to unbundle BOC packet switching.

Finally, the Commission should explicitly recognize the diversity of the advanced services market by defining advanced services as all relevant technologies, including cable modem service, DSL, fixed wireless, and satellite.

Respectfully submitted,

BELLSOUTH CORPORATION
By its Attorneys

/s/ Stephen L. Earnest

Stephen L. Earnest
Richard M. Sbaratta

Suite 4300
675 West Peachtree Street, N. E.
Atlanta, Georgia 30375
(404) 335-0711

Date: October 9, 2001

CERTIFICATE OF SERVICE

I do hereby certify that I have this 9th day of October 2001 served the parties of record to this action with a copy of the foregoing **REPLY COMMENTS OF BELLSOUTH CORPORATION** by Electronic or U.S. Mail addressed to the parties listed on the attached service list.

/s/ Juanita H. Lee
Juanita H. Lee

SERVICE LIST - DOCKET NO. 98-146

*Magalia Roman Salas
Office of the Secretary
Federal Communications Commission
445 12th Street, S. W.
Room TW-B204
Washington, DC 20554

*Qualex International
Portals II
445 12th Street, SW
Room CY-B402
Washington, DC 20554

Jeffrey A. Eisenach, Ph.D.
Randolph J. May
The Progress & Freedom Foundation
1301 K Street NW
Suite 550E
Washington, DC 20005

Douglas S. Wiley
Director – Government Relations
Alcatel USA, Inc.
1909 K Street, NW
Suite 800
Washington, DC 20006

John B. Glicksman
Terry Romine
Adelphia Business Solutions, Inc.
One North Main Street
Coudersport, PA 16915

Burt A. Braverman
Scott Thompson
Erik J. Cecil
Cole, Raywid & Braverman, LLP
Attorneys for Adelphia Business
Solutions, Inc.
1919 Pennsylvania Avenue, NW, Ste. 200
Washington, DC 20006

Peter K. Pitsch
Robinanne J. Stancavage
Intel Government Affairs
1634 I Street, NW, Suite 300
Washington, DC 20006

Gary M. Epstein
John P. Janka
Arthur S. Landerholm
Latham & Watkins
555 Eleventh Street, NW
Suite 1300
Washington, DC 20004

Michael E. Glover
Edward Shakin
Lawrence W. Katz
1515 North Courthouse Road
Suite 500
Arlington, VA 22201

Howard J. Symons
Michelle M. Mundt
Mintz, Levin, Cohn, Ferris, Glovsky
and Popeo, P.C.
701 Pennsylvania Avenue, NW
Suite 900
Washington, DC 20004

Mark C. Rosenblum
Stephen C. Garavito
Room 1131M1
295 North Maple Avenue
Basking Ridge, NJ 07920

Douglas Garrett
James H. Bolin, Jr.
AT&T Broadband
188 Inverness Drive West
Sixth Floor
Englewood, CO 80112

Robin Hauer
Traci Bone
Jill Sandford
Metromedia Fiber Network Services, Inc.
One Meadowlands Plaza
East Rutherford, NJ 07073

Leroy A. Watson
The National Grange of the Order
of Patrons of Husbandry
1616 H Street, NW
Washington, DC 20006

Sharon J. Devine
Norman G. Curtright
Suite 700
1020 19th Street, NW
Washington, DC 20036

Jay C. Keithley
Sprint Corporation
401 9th Street, NW
#400
Washington, DC 20004

Rick Zucker
6360 Sprint Parkway
KSOPHE0302
Overland Park, KS 66251

Stuart Polikoff
Stephen Pastorkovich
21 Dupont Circle, NW
Suite 700
Washington, DC 20036

Max Yzaguirre
Bret A. Perlman
Rebecca Klein
Public Utility Commission of Texas
1701 N. Congress Avenue
P.O. Box 13326
Austin, TX 7711-3326

Steven Berman
National Rural Telecommunications
Cooperative
2121 Cooperative Way
Suite 500
Herndon, VA 20171

Matthew D. Bennett
Alliance for Public Technology
919 18th Street, NW
Suite 900
Washington, DC 20006

Richard A. Askoff
Regina McNeil
National Exchange Carrier
Associations, Inc.
80 South Jefferson Road
Whippany, NJ 07981

Thomas K. Crowe
Daron T. Threet
Law Offices of Thomas K. Crowe, P.C.
2300 M Street, NW
Suite 800
Washington, DC 20037

Lawrence E. Sarjeant
Linda L. Kent
Keith Townsend
United States Telecom Association
1401 H Street, NW
Suite 600
Washington, DC 20005-2164

Anu Seam
Roger K. Toppins
Paul K. Mancini
SBC Communications Inc.
1401 Eye Street, NW
Suite 1100
Washington, DC 20005

Paul Kouroupas
Global Crossing Development Co.
12 Headquarters Plaza
4th Floor, North Tower
Morriston, NJ 07960

Martin L. Stern
Daniel Ritter
Megan H. Troy
Preston Gates Ellis & Rouvelas Meeds LLP
1735 New York Avenue, NW
Suite 500
Washington, DC 20006

Marilyn Mohrman-Gillis
Lonna M. Thompson
Andrew D. Cotlar
Association of America's Public
Television Stations
1350 Connecticut Ave., NW
Suite 200
Washington, DC 20036

Robert M. Halperin
Crowell & Moring LLP
1001 Pennsylvania Avenue, NW
Washington, DC 20004

John W. Katz
Office of the State of Alaska
Suite 336
444 North Capitol Street, NW
Washington, DC 20001

John Davidson Thomas
Cole, Raywid & Braverman, LLP
1919 Pennsylvania Avenue, NW
Suite 200
Washington, DC 20006

Jeremy H. Stern
Robert Jystad
Cole, Raywid & Braverman, LLP
2381 Rosecrans Avenue
Suite 110
El Segundo, CA 90245

Paul J. Sinderbrand
Robert D. Primosch
Wilkinson Barker Knauer, LLP
2300 N Street, NW
Suite 700
Washington, DC 20037-1128

Daniel L. Brenner
Neal M. Goldbert
David L. Nicoll
Counsel for the National Cable &
Telecommunications Association
1724 Massachusetts Avenue, NW
Washington, DC 20036-1903

Kimberly Scardino
WorldCom
1133 19th Street, NW
Washington, DC 20036

Richard M. Rindler
Swidler Berlin Shereff Friedman, LLP
3000 K Street, NW
Suite 300
Washington, DC 20007-5116

Patrick H. Merrick
AT&T
Suite 1000
1120 20th Street, NW
Washington, DC 20036

Ross A. Buntrock
Kelley Drye & Warren, LLP
1200 19th Street, NW
Suite 500
Washington, DC 20036

David L. Nicoll
NCTA
1724 Massachusetts Avenue, NW
Washington, DC 20036-1903

*** Via Electronic Mail**